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SEP - 9 2015	
CLERK US DISTRICT COURT DISTRICT OF NEVADA	
BY: _____	DEPUTY _____

THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

Julie Appel, )  
)  
Plaintiff, )  
)  
vs. )  
)  
SEARS MANAGEMENT HOLDING )  
Company, a corporation, d.b.a )  
Sears, Roebuck and Co., a )  
Nevada foreign corporation; )  
Scott Bridges, an individual; )  
DOES 1 through V; and DOE )  
CORPORATIONS VI through X )  
inclusive, )  
)  
Defendants. )

COMPLAINT AND  
DEMAND FOR JURY TRIAL

2:15-cv-1735

COMES NOW, the Plaintiff, JULIE APPEL, by and through her  
counsel, Dana M. Cotham, Esq., and complains against the  
Defendants SEARS MANAGEMENT HOLDING COMPANY, a Corporation, d.b.a.  
Sears, Roebuck and Co, a Nevada Foreign corporation; and Scott  
Bridges, in his individual and professional capacities, as  
follows:

/ / /

I.

JURISDICTION AND VENUE

1. This action is brought and jurisdiction lies pursuant to Title VII of the Civil Rights Act of 1964, as amended; 42 U.S.C. §2000, et seq.; Title I of the Americans With Disabilities Act, as amended, 42 U.S.C. 12101, et seq.; prohibition of employment discrimination under 42 U.S.C. § 1981; and Age Discrimination in Employment Act, 29 U.S.C. § 626, et seq.

2. All conditions precedent to jurisdiction under 706 of Title VII, 42 U.S.C. §2000e5(f)(3) have been executed or complied with as a "Charge of Discrimination" was filed with the Equal Employment Opportunity Commission ("EEOC") (a true and correct copy is attached hereto as Exhibit "1" and incorporated herein) and the Nevada Equal Rights Commission ("NERC") (a true and correct copy is attached hereto as Exhibit "2" and incorporated herein), as the deferral agency, within one hundred and eighty days of the unlawful employment practices alleged or the last discriminatory act as alleged herein.

3. The "Notice of Right to Sue," issued on request, (a true and correct copy is attached hereto as Exhibit "3" and incorporated herein) was issued by the EEOC, Charge No. 34B-2014-01017, on June 9, 2015, and Plaintiff received the notice on or about June 12, 2015.

4. Plaintiff filed her complaint within 90 days of the

1 receipt of notice.

2 5. Venue is proper in this District because the acts  
3 complained of occurred in this District pursuant to 28 U.S.C. §  
4 1391(b).

5  
6 **II.**

7 **PARTIES**

8 **A. PLAINTIFF**

9 6. Plaintiff Julie is a qualified/eligible "employee" of  
10 Defendant Sears within the meaning of 42 U.S.C. §2000e(f); 29 CFR  
11 825.110; Title VII of the Civil Rights Act of 1991 (42 U.S.C.  
12 §1981 et seq.); Nevada Revised Statutes §§ 608.010 and 613.010 et  
13 seq.; and related claims under Nevada law.  
14

15 **B. DEFENDANTS**

16 7. Defendant, Sears Management Holdings, d.b.a. Sears,  
17 Roebuck and Co., is a Nevada Foreign Corporation and employs 15 or  
18 more employees and is an "employer" within the meaning of 42  
19 U.S.C. §2000e(b); 29 CFR 825.104; Title VII of the Civil Rights  
20 Act of 1991 (42 U.S.C. §1981 et seq.); Nevada Revised Statutes §§  
21 608.011 and 613.310; and related claims under Nevada law. Sears  
22 maintains a retail store at the Meadows Mall, 4300 Meadows Lane,  
23 Las Vegas, Nevada 89107.  
24

25 8. Scott Bridges, an individual, was, at all times, the store  
26 manager of the Meadows Mall location of Defendant Sears Management  
27  
28

1 Holdings, d.b.a Sears, Roebuck and Co. Defendant Bridges was also  
2 the Plaintiff's immediate supervisor.

3 9. Plaintiff is ignorant of the true names and capacities,  
4 whether individual, corporate, associate, or otherwise, of DOES 1  
5 through 10, inclusive. The Plaintiff is informed and believes and  
6 thereon alleges that each of the fictitiously named Defendants are  
7 in some way responsible for, or participated in, or contributed  
8 to, the matters and things complained of herein, and is legally  
9 responsible in some manner. Plaintiff will seek leave to amend  
10 this Complaint when the true names, capacities, participation, and  
11 responsibilities have been ascertained.  
12  
13

14 10. Plaintiff was born on May 30, 1962.

15 11. Plaintiff is currently a resident of Clark County, State  
16 of Nevada.

17 12. Plaintiff is a member of a protected class.

18 13. To Plaintiff's information and belief, Defendant Sears  
19 is a foreign corporation properly operating in the State of  
20 Nevada. Defendant conducts business on a regular and continuing  
21 basis in Clark County, State of Nevada, and is engaged in retail  
22 services. Defendant Sears is an employer engaged in an industry  
23 effecting commerce and employs a sufficient number of employees to  
24 warrant suit under the law. Defendant Sears is authorized to  
25 conduct business in the State of Nevada and is in an industry  
26 effecting commerce within the meaning of 29 U.S.C. §630(h).  
27  
28

1        14. To Plaintiff's information and belief, Defendant Bridges  
2 is an individual who resides in Clark County, Nevada. He served as  
3 Julie's direct supervisor while employed by Defendant Sears.

4        15. Defendants DOE CORPORATIONS VI through X are corporations  
5 or other business entities whose exact relationship with Defendant  
6 Sears is unknown, but are believed to be parent corporations,  
7 predecessors, or successors in interest to Defendant Sears, and/or  
8 joint employers of the Plaintiff with Defendant Sears, and an  
9 employer defined in 42 U.S.C. §2000c. Plaintiff is informed and  
10 believes that each of the Defendants designated herein as DOE and  
11 DOE CORPORATIONS are responsible in some manner for the events and  
12 happenings referred to and caused damage proximately to Plaintiff  
13 as alleged herein and Plaintiff will ask leave of court to amend  
14 this Complaint to insert true names and capacities of DOES 1  
15 through V and DOE CORPORATIONS VI through X, when the same have  
16 been ascertained and to join such Defendants to this action.  
17  
18  
19

20        16. All discriminatory practices alleged herein to be  
21 unlawful were committed within the jurisdiction of the United  
22 States District Court for the District of Nevada, Southern  
23 Division, thus venue is proper under 28 U.S.C. §1391.

24        / / /

25        / / /

26        / / /

27        / / /

28        / / /

III.

STATEMENT OF FACTS

17. On December 20, 2013, Sears Holdings Corporation, d.b.a. Sears, Roebuck and Co. (hereinafter "Sears"), hired Julie Appel as an Assistant Store Manager Brand Central.

18. She began working at the Meadows Mall store location, 4300 Meadows Lane, Las Vegas, Nevada.

19. At the time of her hire, she brought with her 20 years of retail management experience.

20. During her first few months with Sears, Julie worked a 5-day/45 hours per week shift. At some point after her first few months, the store manager and Julie's immediate supervisor, Scott Bridges, (hereinafter "Bridges"), changed her schedule.

21. Bridges required Julie to work six (6) days a week, under the directive of "not leaving until the work is done," with each day requiring at least 12 hours of work.

22. Immediately after learning of the new work hours, Julie informed her immediate supervisor Bridges and Jon Lawson, Sears District Manager of her severe asthmatic condition.

23. At a point shortly after her schedule changed, she also informed Human Resources of her severe asthmatic condition.

24. Julie suffers from the serious health condition known as Reactive Airway Disease Syndrome (RADS) which is a medical

1 condition/physical condition covered by the ADA, as amended, and  
2 the Nevada Fair Employment Act.

3 25. In spite of her disability, Julie was able to perform  
4 the essential functions of her job as an Assistant Store Manager  
5 Brand Central.  
6

7 26. Upon learning of the new schedule requirement, Julie  
8 requested an accommodation for her disability.

9 27. She requested to work the same number of hours in five  
10 (5) days rather than six (6) days.

11 28. She informed Sears the RADS (severe asthma) caused her  
12 to need more than one (1) day for her lungs to "recover."  
13

14 29. As a qualified individual with a disability, Julie  
15 understood Sears maintained an obligation to engage in the  
16 interactive process with her to attempt to accommodate her.

17 30. Sears denied her request for an accommodation without  
18 any interactive process on the part of Sears.  
19

20 31. Instead, upon learning of Julie's accommodation request,  
21 Bridges responded by telling her, "what was fair for one is fair  
22 for all" and she, "just needed to deal with it." In other words,  
23 everyone is treated equally, no accommodation or "special  
24 treatment" for anyone. Sears denied her request without any  
25 interaction or dialogue with Julie.  
26

27 32. Bridges informed Julie he would not accommodate her in  
28 any way and he further informed her that her condition was

1 basically irrelevant. Accordingly, he denied her request without  
2 any interaction or conversation with Julie.

3 33. Upon express notice of Julie's disability, Bridges, the  
4 highest ranking manager at a Sears store location and Sears' Human  
5 Resources Department each failed to comply with the most basic  
6 disability law requirement—the interactive process.  
7

8 34. Sears failed to determine if there was an accommodation  
9 deemed reasonable or in the alternative, if any and/or all  
10 possible accommodations rose to the level of an undue hardship.  
11

12 35. Throughout Julie's employment Bridges continuously  
13 berated, publically humiliated, and undermined Julie and other  
14 female Assistant Managers in the presence of other employees (some  
15 of whom were Julie's direct subordinates), and worst of all,  
16 Bridges yelled at Julie and other employees while in ear-shot of  
17 Sears' customers.  
18

19 36. Bridges also chose to blatantly violate Sears' own  
20 company policies.

21 37. One such violation involved the Sears' policy requiring  
22 "back of house" employees to assist with moving appliances around  
23 on the floor.

24 38. Bridges would NOT allow back of house employees to  
25 assist with the moving of the appliances. Rather, he required the  
26 floor staff and management, in other words, non-back of house  
27  
28



1 employees, to move the appliances around in spite of the company's  
2 policy.

3 39. Additionally, he continuously required older workers to  
4 complete tasks and perform work they were not supposed to, like  
5 moving around heavy furniture.  
6

7 40. Bridges did not publically humiliate the two male  
8 Assistant Store Managers.

9 41. Throughout Julie's employment, Bridges continued to  
10 exhibit inappropriate behavior and his treatment of her became  
11 increasingly more intolerable.  
12

13 42. Even though Julie wanted the behavior and treatment to  
14 change and/or stop, she did not want to file a formal complaint,  
15 rather, she attempted on numerous occasions to resolve the matter  
16 informally.

17 43. Julie engaged in numerous conversations with Jon Lawson,  
18 District Manager Retail Services - D/196 (hereinafter "Lawson").  
19

20 44. Lawson said he would speak with Bridges; however, Lawson  
21 also informed Julie he believed she was "too sensitive" and she  
22 was "misreading Mr. Bridges."

23 45. Lawson NEVER mentioned, nor assured, Julie of Sears'  
24 "commitment" to prevent her from being retaliated against.  
25

26 46. Nothing ever came of any of her conversations with  
27 Lawson; however, Bridges' inappropriate behavior towards and  
28 treatment of Julie continued to increase.

1           47. While Julie believes Lawson spoke with Bridges, neither  
2 his treatment of her, nor his behavior towards her ever improved.

3           48. To the contrary, Bridges' treatment of Julie and  
4 behavior towards her, continued to intensify with increased  
5 hostility and overall lack of cooperation.  
6

7           49. Since Lawson was unable to resolve Julie's concerns, on  
8 or about March 18, 2014, Julie filed her formal complaint  
9 utilizing the "88 SEARS" process (an internal complaint  
10 mechanism).  
11

12           50. When Julie filed her March 18 complaint, she reported  
13 numerous incidents of Bridges harassing her (as well as other  
14 staff) and his increased intimidation.

15           51. Upon filing her complaint, the Sears' system assigned  
16 her case a number: 1921956624.

17           52. Following the filing of her complaint, she continued to  
18 follow up every few days to find out the status of her complaint.  
19

20           53. After the first week, she continued to follow up on a  
21 weekly basis.

22           54. After several weeks of continuous follow up, Lawson,  
23 finally contacted her to discuss the merits of her complaint.  
24

25           55. The conversation lasted approximately 90 minutes and his  
26 conclusion, which he shared with her immediately was, once again,  
27 focused on his feelings about Julie being "too sensitive."  
28

1        56. In spite of her "sensitivity," he promised Julie he  
2 would discuss Julie's concerns with Bridges.

3        57. After the meeting, Julie's complaint seemed to just  
4 "fade" away; however, what did not "fade away" was Bridges'  
5 behavior and his treatment of Julie.  
6

7        58. In fact, once again, his behavior and treatment got  
8 worse during the time following the filing of her complaint.

9        59. While Bridges continued to spiral out of control and  
10 continued to mistreat Julie, she continued to try to connect with  
11 someone to discuss her "88 SEARS" case.  
12

13        60. She finally connected with someone and learned Sears  
14 closed the case. Sears provided no further explanation.

15        61. Sears stated it maintained no obligation to inform her  
16 of anything related to her case, least of all the disposition.

17        62. No one ever contacted Julie at any point after she filed  
18 her complaint to discuss her complaint or its ultimate  
19 disposition.  
20

21        63. As previously stated, after Julie lodged her complaint  
22 through "88 SEARS," Bridges treatment of her grew increasingly  
23 unbearable, culminating in Bridges assaulting and battering her.

24        64. More specifically, on or about June 10, 2014, an  
25 incident occurred involving Bridges, Julie, and two other  
26 employees (Sammie, last name unknown and Joseph Herbert).  
27  
28

1       65. Bridges very loudly and very publically disciplined  
2 Sammie after which Julie attempted to diffuse the situation.

3       66. Specifically, she stated she was going to "recall the  
4 rally" (in other words, reiterate to the staff the need for their  
5 attendance at the "gathering") and she began to walk away.  
6

7       67. Julie could not believe as she watched Bridges forcefully  
8 reach out and grab her arm, physically pulling her back, and while  
9 still firmly holding her arm, he commanded in a loud, firm voice,  
10 "NO, you will stay and listen to this conversation!"  
11

12       68. Julie feared for her own safety, as well as the safety  
13 of the other employees.

14       69. This violent encounter reinforced her concern about the  
15 hostility in the workplace which she previously reported back on  
16 March 18, 2014 in her first "88 SEARS" complaint.

17       70. In spite of knowing the last time she filed a complaint  
18 nothing happened. Julie wanted to do the right thing. She once  
19 again contacted "88 SEARS," to lodge her complaint about the  
20 assault and battery through the proper channels.  
21

22       71. The system assigned a new case number: 1922049450 and  
23 Julie then spoke with a Sears' employee to provide Sears with more  
24 details of the incident.

25       72. When Julie informed the "intake representative" of  
26 Bridges' assault and battery of her, the intake personnel said, "I  
27 cannot believe Scott would do that."  
28

1       73. This is entirely inappropriate and casts a shadow of  
2 doubt upon the neutrality and integrity of this process.

3       74. Albeit incomprehensible, just like the first time in  
4 March, Julie waited, and waited, and waited for the investigation  
5 to begin.  
6

7       75. She never heard anything (again) and basically nothing  
8 happened (again), and nothing changed (again).

9       76. During the next several weeks after she filed her second  
10 complaint, in a good faith attempt to resolve yet another matter  
11 involving Bridges, Julie once again reached out to Lawson, her  
12 District Manager.  
13

14       77. Lawson once again failed to remedy her concerns.

15       78. Lawson directed Julie "to do nothing" regarding her  
16 assault and battery complaint even though she told him Bridges was  
17 still intimidating everyone, yelling and screaming, not to mention  
18 it had been two weeks since she filed her "88 SEARS" complaint  
19 with no reply from Sears.  
20

21       79. Lawson's advice to her was, "be patient and allow time  
22 for a proper investigation."

23       80. Sears maintained Bridges' employment as a store manager.

24       81. Sears allowed him to continue to directly supervise  
25 Julie, the very employee he assaulted and battered; the very same  
26 employee who already lodged serious allegations against him.  
27  
28

1       82. The only assistance Lawson provided to Julie was for her  
2 "to wait" and "have patience."

3       83. Julie is informed and believes and thereon alleges that  
4 another incident involving Bridges occurred at Sears prior to the  
5 commencement of Julie's employment, specifically, Bridges  
6 inappropriately "touched" a female employee.  
7

8       84. Julie is informed and believes and thereon alleges that  
9 the aforementioned incident was reported and nothing came of that  
10 allegation either.

11       85. Julie is informed and believes and thereon alleges  
12 Bridges no longer works at the Meadows Mall store location.  
13

14       86. After tolerating Bridge's treatment for seven months,  
15 reporting his treatment and behavior through the proper channels,  
16 receiving no recourse, and ultimately enduring an assault and  
17 battery at the hands of Bridges, Julie did what any reasonable  
18 person would do in her situation—she resigned on July 18, 2014.  
19

20       87. Sears was aware Bridges violated its own policies and  
21 yet continued to employ Bridges.

22       88. Julie exhausted the administrative requirements of the  
23 NERC and EEOC by filing an administrative complaint. Julie  
24 subsequently requested a right to sue letter from same and the  
25 right to sue letter was issued on June 9, 2015 and mailed on June  
26 10, 2015.  
27

28     / / /

IV.

CAUSES OF ACTION

FIRST CAUSE OF ACTION  
FAILURE TO ACCOMMODATE

[Against All Defendants, Does I - V, and Doe Corporations VI - X]

89. Plaintiff hereby incorporates paragraphs 1 through 88 of this Complaint as though fully set forth herein.

90. Under the Americans With Disabilities Act (ADA) and the Nevada Fair Employment Act, a qualified person with a disability is described as someone who has a physical or mental impairment that substantially limits one or more major life activities, or is regarded as having such impairments, or has a record of such impairment.

91. Breathing and working are "major life activities."

92. Asthma and allergies are considered disabilities under the ADA, even if symptoms are controlled by medication.

93. Under the ADA, an employer must provide reasonable accommodation for an employee with a known physical disability.

94. Julie suffers from RADS, a physical disability/medical condition covered by the ADA and the Nevada Fair Employment Act.

95. Julie's physical disability/medical condition was well-known by Bridges and Sears. In spite of knowing of her condition, Defendants failed to reasonably accommodate her physical disability/medical condition as alleged herein.

1        96. As a result of Defendants' failure to accommodate  
2 Julie's physical disability/medical condition, Julie has suffered  
3 and continues to suffer damages in the form of lost wages and  
4 other employment benefits, and severe emotional and physical  
5 distress, the amount of which will be proven at trial.  
6

7        97. Defendants and each of them acted for the purpose of  
8 causing Julie to suffer financial loss and emotional distress and  
9 physical distress and are guilty of oppression and malice,  
10 justifying an award of exemplary and punitive damages.  
11

12                    **SECOND CAUSE OF ACTION**  
13                    **FAILURE TO ENGAGE IN INTERACTIVE PROCESS**  
14                    **[Against All Defendants, Does I - V, and Doe Corporations VI - X]**

15        98. Plaintiff hereby incorporates paragraphs 1 through 97 of  
16 his Complaint as though fully set forth herein.  
17

18        99. It is unlawful for an employer to fail to engage in a  
19 timely, good faith interactive process with a disabled employee to  
20 determine effective reasonable accommodation.  
21

22        100. As alleged herein, Defendants failed to engage in the  
23 interactive process with Julie in order to determine effective  
24 reasonable accommodations for Julie's physical disability/medical  
25 condition.  
26

27        101. As a result of Sears' and Bridges' failure to engage in  
28 the interactive process with Julie to determine reasonable  
accommodations for Julie's physical disability/medical condition,  
Julie has suffered and continues to suffer damages in the forms of



1 lost wages and other employment benefits, and severe emotional and  
2 physical distress, the amount of which will be proven at trial.

3 102. Defendants and each of them acted for the purpose of  
4 causing Julie to suffer financial loss and emotional distress and  
5 physical distress and are guilty of oppression and malice,  
6 justifying an award of exemplary and punitive damages.  
7

8 **THIRD CAUSE OF ACTION**  
9 **DISCRIMINATION ON THE BASIS OF SEX**

10 **[Against All Defendants, Does I - V, and Doe Corporations VI - X]**

11 103. Plaintiff hereby incorporates paragraphs 1 through 102  
12 of this Complaint as though fully set forth herein.

13 104. In short, it is an unlawful employment practice for an  
14 employer such as Sears to discriminate against any person with  
15 respect to the person's compensation, terms, conditions or  
16 privileges of employment, because of her sex; or to limit,  
17 segregate, or classify an employee in a way which would deprive or  
18 tend to deprive the employee of employment opportunities or  
19 otherwise adversely affect her status as an employee, because of  
20 her sex.  
21

22 105. Sex-based discrimination and harassment violate Nevada  
23 law as well as Title VII of the Civil Rights Act of 1964 as  
24 amended.  
25

26 106. Bridge's unfavorable treatment of Julie while employed  
27 by Sears constituted sex-based discrimination.  
28

1        107. His treatment of her violated both federal and state  
2 law.

3        108. Julie was subjected to adverse action as a result of  
4 the sex-based discrimination.  
5

6                                **FOURTH CAUSE OF ACTION**  
7                                **RETALIAITON**

8        **[Against All Defendants, Does I - V, and Doe Corporations VI - X]**

9        109. Plaintiff hereby incorporates paragraphs 1 through 108  
10 of this Complaint as though fully set forth herein.

11        110. The law forbids retaliation when it comes to any aspect  
12 of employment, including hiring, firing, pay, job assignments,  
13 promotions, layoff, training, fringe benefits, and any other term  
14 or condition of employment.

15        111. There are three essential elements of a retaliation  
16 claim: (a) protected activity -- opposition to discrimination or  
17 participation in the statutory complaint process; (b) adverse  
18 action; and (c) causal connection between the protected activity  
19 and the adverse action.  
20

21        112. When Julie engaged in the protected activity of  
22 lodging an internal complaint alleging Bridges' and Sears' failure  
23 to accommodate her disability, Bridges' treatment of Julie  
24 deteriorated and his hostile behavior towards her increased, which  
25 culminated in her constructive discharge.  
26

27        113. Defendants and each of them acted for the purpose of  
28 causing Julie to suffer financial loss and emotional distress and

1 physical distress. Defendants and each of them acted with malice  
2 and with reckless indifference to Julie's federally protected  
3 rights and are guilty of oppression and malice, justifying an  
4 award of exemplary and punitive damages.

5  
6 **FIFTH CAUSE OF ACTION**  
7 **ASSAULT**

8 **[Against All Defendants, Does I - V, and Doe Corporations VI - X]**

9 114. Plaintiff hereby incorporates paragraphs 1 through 113  
10 Of this Complaint as though fully set forth herein.

11 115. Respondeat superior and intentional torts law in Nevada  
12 holds an employer liable for an assault committed by an employee  
13 when the employee is acting in the course and scope of his  
14 employment.

15 116. While an employee is engaged in the service and work of  
16 his employer, and he does an act personal to himself that is so  
17 inextricably intertwined with his service to his employer, his  
18 doing so does not break the employment relationship so as to  
19 release the employer from responsibility for the employee's  
20 conduct.  
21

22 117. There can be no dispute Bridges' assault of Julie was  
23 intertwined with his service and work at Sears (serving as a store  
24 manager). He assaulted her while performing his duties as store  
25 manager and accordingly did not break the employment relationship,  
26 in other words, Sears is not released from responsibility for its  
27 employee, Bridges' conduct.  
28

1        118. Defendants and each of them acted for the purpose of  
2 causing Julie to suffer financial loss and emotional distress and  
3 physical distress. Defendants and each of them acted with malice  
4 and with reckless indifference to Julie and and are guilty of  
5 oppression and malice, justifying an award of exemplary and  
6 punitive damages.  
7

8                                **SIXTH CAUSE OF ACTION**  
9                                **BATTERY**

10        **[Against All Defendants, Does I - V, and Doe Corporations VI - X]**

11        119. Plaintiff hereby incorporates paragraphs 1 through 118  
12 Of this Complaint as though fully set forth herein.

13        120. Respondeat superior and intentional torts law in Nevada  
14 holds an employer liable for a battery committed by an employee  
15 when the employee is acting in the course and scope of his  
16 employment. While an employee is engaged in the service and work  
17 of his employer, and he does an act personal to himself that is so  
18 inextricably intertwined with his service to his employer, his  
19 doing so does not break the employment relationship so as to  
20 release the employer from responsibility for the employee's  
21 conduct.  
22

23        121. There can be no dispute Bridges' battery of Julie was  
24 intertwined with his service and work at Sears (serving as a store  
25 manager). He battered her while performing his duties as store  
26 manager and accordingly did not break the employment relationship,  
27  
28

1 in other words, Sears is not released from responsibility for its  
2 employee, Bridges', conduct.

3 122. Defendants and each of them acted for the purpose of  
4 causing Julie to suffer financial loss and emotional distress and  
5 physical distress. Defendants and each of them acted with malice  
6 and with reckless indifference to Julie and are guilty of  
7 oppression and malice, justifying an award of exemplary and  
8 punitive damages.  
9

10 **SEVENTH CAUSE OF ACTION**  
11 **VICARIOUS LIABILITY**

12 **[Against All Defendants, Does I - V, and Doe Corporations VI - X]**

13 123. Plaintiff hereby incorporates paragraphs 1 through 122  
14 of this Complaint as though fully set forth herein.

15 124. Vicarious liability is a separate theory of liability,  
16 which provides that an employer is liable for the torts of an  
17 employee under an agency theory, even if the employer did nothing  
18 wrong.  
19

20 125. The acts of an agent of the company are assumed, by  
21 law, to be the acts of the company itself, provided the tortfeasor  
22 was acting within the course of his employment.

23 126. Bridges was exercising his authority as a supervisor to  
24 "demand" an employee "listen to a conversation," and accordingly  
25 his actions were well within the boundaries of the course and  
26 scope of his employment. Therefore, vicarious liability attaches  
27 to Sears.  
28

EIGHTH CAUSE OF ACTION  
NEGLIGENT HIRING

[Against Defendant Sears, Does I - V, and Doe Corporations VI - X]

127. Plaintiff hereby incorporates paragraphs 1 through 126 of this Complaint as though fully set forth herein.

128. Nevada case law is clear, the tort of negligent hiring imposes a general duty on the employer to conduct a reasonable background check on a potential employee to ensure that an employee is fit for the position.

129. Bridges' "hot temper" and hostility in the workplace were evident and Julie attempted to bring this to Sears' attention numerous times informally and then officially in her "88 SEARS" complaint in March 2014.

130. Julie is informed and believes and therefore alleges, Bridges acted this way in his former positions, and Sears failed to make adequate inquiry concerning Bridges' behavior in his former positions.

131. Sears breached its duty and is negligent in its hiring of Scott Bridges.

132. As a direct and proximate result of Sears' actions, Julie suffered damages. Sears acted for the purpose of causing Julie to suffer financial loss and emotional distress and physical distress and are guilty of oppression and malice, justifying an award of exemplary and punitive damages.

/ / /

NINTH CAUSE OF ACTION  
NEGLIGENT RETENTION

[Against Defendant Sears, Does I - V, and Doe Corporations VI - X]

133. Plaintiff hereby incorporates paragraphs 1 through 132 of this Complaint as though fully set forth herein.

134. Similar to the duty attached when hiring an employee, the employer maintains a duty to use reasonable care in the training, supervision, and retention of its employees to ensure an employee is fit, and remains fit, for his position.

135. Where a person acting in a managerial capacity either does an outrageous act or approves of such an act by a subordinate, the imposition of punitive damages upon the employer serves as a deterrent to the employment of unfit persons for important positions.

136. Julie is informed and believes and thereon alleges Sears knew of another incident whereby Bridges inappropriately touched a Sears' female employee shortly before Julie became employed with Sears.

137. Julie herself complained numerous times of Bridges' "short fuse" as well as his temperament and behavior overall being inappropriate for an employee of his caliber, specifically, a store manager.

138. In spite of knowing this, as well as Sears having the knowledge that Bridges regularly and publically intimidated and humiliated staff both on the floor as well as back of house, Sears

1 breached its duty owed to Julie when it maintained Bridges'  
2 employment.

3 139. He remained employed even after he assaulted and  
4 battered Julie. And worse yet, he continued, at Sears' direction,  
5 to directly supervise Ms. Appel.  
6

7 140. As a direct and proximate result of Sears' actions,  
8 Julie suffered damages. Sears acted for the purpose of causing  
9 Julie to suffer financial loss and emotional distress and physical  
10 distress and are guilty of oppression and malice, justifying an  
11 award of exemplary and punitive damages.  
12

13 **TENTH CAUSE OF ACTION**  
14 **TORTIOUS BREACH OF THE**  
15 **IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**  
16 **[Against All Defendants, Does I - V, and Doe Corporations VI - X]**

17 141. Plaintiff hereby incorporates paragraphs 1 through 140  
18 of this Complaint as though fully set forth herein.

19 142. In every contract or agreement there is an implied  
20 promise of good faith and fair dealing. This means each party  
21 impliedly agrees not to do anything to destroy or injure the right  
22 of the other to receive the benefits of the contract. Thus, each  
23 party has the duty not to prevent or hinder performance by the  
24 other party. In addition to being a breach of contract, a breach  
25 of the implied covenant of good faith and fair dealing may also be  
26 a tort. A breach of the implied covenant of good faith and fair  
27 dealing will be a tort when there exists a special relationship of  
28



1 trust, reliance, or dependency between the parties. A tortious  
2 breach of the implied covenant of good faith and fair dealing  
3 allows for recovery of any other damages proximately caused by the  
4 defendant's conduct including physical or emotional distress,  
5 suffering, inconvenience, anxiety, loss of security, peace of  
6 mind, humiliation, indignity, disgrace, or financial losses.  
7

8 143. There existed a special element of reliance between  
9 Julie and Bridges, where Bridges was Julie's supervisor in a  
10 superior or entrusted position.  
11

12 144. There existed a special element of reliance between  
13 Julie and Defendant Sears where Sears was in a superior or  
14 entrusted position.

15 145. Defendants each breached their respective duty of good  
16 faith and fair dealing.

17 146. Julie was harmed and suffered damages as a result of  
18 these breaches.  
19

20 **ELEVENTH CAUSE OF ACTION**  
21 **TORTIOUS CONSTRUCTIVE DISCHARGE**

22 **[Against Defendant Sears, Does I - V, and Doe Corporations VI - X]**

23 147. Plaintiff hereby incorporates paragraphs 1 through 146  
24 of this Complaint as though fully set forth herein.

25 148. In Nevada, an employer is liable for Tortious  
26 Constructive Discharge when each of the following elements are  
27 present: (a) the employee's resignation was induced by action and  
28 conditions that violate public policy; (b) a reasonable person in

1 the employee's position at the time of the resignation would have  
2 also resigned because of the aggravated and intolerable employment  
3 action and conditions; (c) the employer had actual or constructive  
4 knowledge of the intolerable actions and conditions and their  
5 impact on the employee; and (d) the situation could have been  
6 remedied.  
7

8 149. Julie's resignation was induced by Sears discriminating  
9 against her and failing to attempt to accommodate her disability.  
10 Additionally, she was forced to resign because of Sears' failure  
11 to investigate and remedy Bridges' treatment of Julie.  
12

13 150. A reasonable person in Julie's position at the time of  
14 her resignation would have also resigned because of the aggravated  
15 and intolerable employment action and conditions created by Sears  
16 and Bridges.  
17

18 151. Sears had actual knowledge of the intolerable actions  
19 and conditions and their impact on Julie as she filed two separate  
20 formal "88 SEARS" complaints and had numerous conversations with  
21 Lawson, her District Manager.  
22

23 152. Sears could have remedied this matter by investigating  
24 the allegations and removing Julie from Bridges' supervision.  
25 Additionally, Sears could have engaged in the interactive process  
26 Bridges to continue his treatment and increasingly hostile  
27 behavior towards Julie that culminated in his assault and battery  
28 of her on June 10, 2014. In spite of her formally complaining

1 again, Bridges remained her direct supervisor which further  
2 enabled his campaign of inappropriate treatment and increasingly  
3 hostile behavior towards her.

4 153. As a direct and proximate result of Sears' actions,  
5 Julie suffered damages. Sears acted for the purpose of causing  
6 Julie to suffer financial loss and emotional distress and physical  
7 distress and are guilty of oppression and malice, justifying an  
8 award of exemplary and punitive damages.  
9

10 V.

11 PRAYER FOR RELIEF

12 WHEREFORE, Plaintiff Julie prays that this Court grant the  
13 following relief:  
14

15 A. For compensatory damages according to proof and  
16 prejudgment interest to the extent allowed by law;

17 B. For exemplary and punitive damages according to proof;

18 C. For recovery of back pay, front pay, and all other lost  
19 employment benefits;  
20

21 D. For injunctive relief requiring Defendant Sears to  
22 provide training to its managers to educate employees about  
23 disabilities and specifically the requirements under the Americans  
24 With Disabilities Act.


25 C. For attorney fees and costs on the First, Second, and  
26 Third Causes of Action; and  
27

28 / / /

1 F. For such other and further relief as the court deems just  
2 and proper.

3 LAW OFFICES OF DANA M. COTHAM

4  
5 Dated: 9.9.15


  
6 Dana M. Cotham  
7 Attorney for Plaintiff

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands a jury trial in this action.

10  
11 LAW OFFICES OF DANA M. COTHAM

12  
13 Dated: 9.9.15

  
14 Dana M. Cotham  
15 Attorney for Plaintiff  
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